

1
2
3
4
5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT SEATTLE

8 LEONARD WILLIAM WALKER,
9 Plaintiff,

10 v.

11 UNITED STATES CUSTOMS AND
12 BORDER PROTECTION, *et al.*,
Defendants.

Case No. C11-1557RSL

ORDER DENYING MOTION
APPEALING DENIAL OF
REQUEST FOR COURT-
APPOINTED COUNSEL

13 This matter comes before the Court on Plaintiff's pro se "Appeal Motion for a
14 Court Appointed Attorney" (Dkt. # 10). Plaintiff disagrees with Magistrate Judge James
15 P. Donohue's decision to deny Plaintiff's request for a court-appointed attorney. Dkt. #
16 7. The Court DENIES the motion.

17 As Judge Donohue correctly noted, "[t]he decision to appoint counsel rests within
18 'the sound discretion of the trial court and is granted only in exceptional
19 circumstances.'" Id. (quoting Agyeman v. Corr. Corp. of Am., 390 F.3d 1101, 1103
20 (9th Cir. 2004) (citation omitted)). "A finding of exceptional circumstances requires an
21 evaluation of both 'the likelihood of success on the merits [and] the ability of the
22 petitioner to articulate his claims pro se in light of the complexity of the legal issues
23 involved.'" Wilborn v. Escalderon, 789 F.2d 1328, 1331 (9th Cir. 1986) (alteration in
24 original) (citation omitted). And the Court agrees that neither of these factors favor
25 Plaintiff's request.

1 First, Plaintiff's claim against "these Government Agencies for damages of libel,
2 slander and defamation" is unlikely to succeed. "The [Federal Torts Claim Act] is the
3 exclusive remedy for tortious conduct by the United States, and it only allows claims
4 against the United States." FDIC v. Craft, 157 F.3d 697, 706 (9th Cir. 1998). Though
5 FTCA "claims can arise from the acts or omissions of United States agencies (28 U.S.C.
6 § 2671), an agency itself cannot be sued under the FTCA." Id. Moreover, even
7 operating under the assumption that Plaintiff could amend his complaint to name the
8 United States as defendant, his claims for damages are foreclosed by 28 U.S.C.
9 § 2680(h), which reserves the United States' sovereign immunity against "[a]ny claim
10 arising out of . . . libel, slander, misrepresentation, [or] deceit."

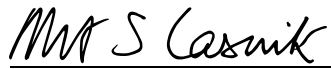
11 Notably, though, the Court recognizes that Plaintiff's claims for injunctive relief
12 stand on different footing. In enacting the Administrative Procedure Act, specifically
13 that portion codified at 5 U.S.C. § 702, Congress "eliminate[d] the defense of sovereign
14 immunity as to any action in a Federal court seeking relief other than money damages
15 and stating a claim based on the assertion of unlawful official action by an agency or by
16 an officer or employee of the agency." Veterans for Common Sense v. Shinseki, 644
17 F.3d 845, 865 n. 19 (9th Cir. 2011). At this time, however, the Court cannot glean from
18 Plaintiff's complaint any "unlawful official action" on the part of the named Defendants
19 or any other domestic federal agency or official. Frankly, Plaintiff's issue appears to be
20 with the Canadian government, which, according to Plaintiff, has failed to inform the
21 United States government of his acquittal of sexual assault charges in Canada. Dkt. # 10
22 at 1–2, 15–16. This is an issue Plaintiff needs to take up with Canadian authorities. The
23 United States' reliance on official information provided to it by Canadian authorities
24 simply does not give rise to a cause of action for "libel, slander [or] defamation."

25 Second, there does not appear to be any reason why Plaintiff cannot articulate his
26 claims pro se. Libel, slander, and defamation are common and uncomplex claims. And,

1 for reasons already explained, any complexities that might exist were Plaintiff to possess
2 an actionable APA claim do not appear present in this case.

3 For all of the foregoing reasons, the Court DENIES Plaintiff's motion (Dkt. #
4 10). It notes for Plaintiff's benefit that his response to Defendants' pending motion to
5 dismiss is due no later than Monday, May 7, 2012.

6
7 DATED this 25th day of April, 2012.

8
9 

10 Robert S. Lasnik
11 United States District Judge
12
13
14
15
16
17
18
19
20
21
22
23
24
25